

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
333 Queen Street
Honolulu, Hawaii 96813

January 25, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, HI

REQUEST FOR APPROVAL TO CONDUCT PUBLIC HEARINGS TO AMEND HAWAII ADMINISTRATIVE RULES, SECTIONS 13-251-76 AND 13-256-108, RELATING TO COMMERCIAL ACTIVITIES ON WAIKIKI AND KAA NAPALI BEACHES AND OCEAN WATERS AND THE LAHAINA-KAANAPALI OFFSHORE RESTRICTED AREA; POSSIBLE EXECUTIVE SESSION PURSUANT TO HRS SECTIONS 92-4 AND 92-5 (a)(4).

STATUTE:

Sections 200-2, 200-3, 200-4, 200-6, 200-22, 200-23, 200-24, and 200-37, Hawaii Revised Statutes

PURPOSE:

Amend administrative rules to reflect the actual number of commercial parasailing operations conducting business in the Lahaina-Kaanapali Offshore Restricted Area and to clarify how commercial activities on Kaanapali beach must be authorized.

REMARKS:

Hawaii Administrative Rules ("HAR") section 13-256-108 states that there are to be no more than five commercial parasail permits issued for the Lahaina-Kaanapali Offshore Restricted Area; however, at the time the rule was adopted there were actually six parasail operations actively engaged in business. The sixth company was located in Kihei and was told that it could relocate to Lahaina-Kaanapali and continue operations. The rule was not amended to reflect the sixth company.

Section 13-251-76, HAR, was amended on June 16, 2003 to address the increased commercial activities taking place on Kaanapali beach. Subsection (g) of section 13-251-76 is confusing and open to different interpretations. A lawsuit against the Department of Land and Natural Resources and Ed Underwood in his official capacity arose because of the confusion caused by the rule. We do not believe that subsection (g) is necessary. We would therefore like to repeal this subsection.

RECOMMENDATIONS:

That the Board:

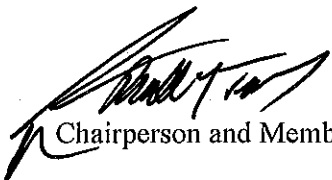
1. Grant approval to conduct public hearings on the island of Maui on the proposed rule amendments.
2. Authorize the Department to schedule the public hearings on these rules as expeditiously as possible following the Governor's approval to conduct public hearings.
3. Authorize the Chairperson to appoint a hearing master to conduct public hearings to receive written and verbal testimony concerning the proposed amendments.

Respectfully submitted,



Edward R. Underwood
Administrator

APPROVED FOR SUBMITTAL



Chairperson and Member

Department of Land and Natural Resources
Amendments to Chapters 13-251 and 13-256
Hawaii Administrative Rules

1. Section 13-251-76, Hawaii Administrative Rules, is amended by repealing subsection (g) as follows:

"§13-251-76 Commercial activities. (a) No person shall engage in commercial activities of any kind in or on Waikiki or Kaanapali ocean waters and beach without a written permit from the board or its authorized representatives.

(b) "Kaanapali beach" means the area within Kaanapali ocean waters that is situated between the shoreline and the mean high tide mark along the shores. Exhibits E(2A) through E(2D), dated February 22, 2002, located at the end of this chapter, are provided for reference, and depict the shoreline location of Kaanapali Beach as of September 12, 2001.

(c) Kaanapali beach is designated for public use for sunbathing, foot traffic, swimming, and other activities which, when engaged in, shall not unduly disrupt others from enjoying the beach.

(d) Constructing or placing any building or structure or storing any property, whether temporary, portable, or permanent, at Kaanapali beach shall be prohibited, except where authorized by the department, and, in addition to any other remedies, unauthorized buildings, structures, or property may be removed by the department at the sole risk and cost of the owner.

(e) Vessel owners shall be prohibited from storing any vessel or associated equipment on Kaanapali beach, unless authorized by the department.

(f) The following activities shall be prohibited on Kaanapali beach:

(1) Kite flying; and

(2) Kite surfing equipment.

[(g) The maximum number of Kaanapali commercial permits that may be issued for monohull vessels to embark and disembark passengers at Kaanapali beach shall not be greater than five, but small craft used to shuttle passengers to and from a monohull vessel in the Kaanapali waters may be included under that vessels commercial activity permit.]

[(h)] (g) Law enforcement and rescue vessels are exempt from the provisions of this section."

[Eff 2/24/94 am 6/16/03] (Auth: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-24) (Imp: HRS §§200-2, 200-3, 200-4, 200-6, 200-22, 200-24)

2. Section 13-256-108, Hawaii Administrative Rules, is amended by amending subsection (b) to read as follows:

"§13-256-108 Lahaina-Kaanapali Offshore Restricted Area.

(b) Restrictions. The Lahaina-Kaanapali Offshore restricted area is designated as a parasailing area. Parasailing activity shall remain seaward of the described boundary when within three miles of the coastline, except when transiting to or from Lahaina harbor, Mala ramp or a designated mooring area. No more than [five] six commercial operating area use permits shall be issued for this zone. Persons operating vessels shall exercise due care when transiting this area. This area shall be closed to parasail operations from December 15 to May 15 of the following year." [Eff 2/24/94] (Auth: HRS §§ 200-22, 200-23, 200-24, 200-37) (Imp: HRS §§ 200-22, 200-23, 200-24, 200-37)